

MARTA F. STROOCK

IBLA 81-1104

Decided April 2, 1982

Appeal from a decision of the Utah State Office, Bureau of Land Management, requiring acceptance of stipulations in noncompetitive oil and gas lease, U-12338.

Affirmed in part, set aside in part, and remanded.

1. Environmental Quality: Generally--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Stipulations

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

APPEARANCES: Phillip Wm. Lear, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On August 21, 1970, Marta F. Stroock, appellant, filed a noncompetitive offer to lease for oil and gas, U-12338, 1/ with the Bureau of Land Management (BLM). In the September 1970 drawing, Marta F. Stroock was the sole drawee for parcel U-6. Because the lands subject to the lease are situated within the Flaming Gorge National Recreation Area (NRA), the issuance of the lease was delayed pending the completion of the Environmental Statement and Management Plan, which was made available on October 25, 1977.

1/ The lands covered by the lease U-12338 are as follows: T. 3 N., R. 20 E., Salt Lake meridian: sec. 25, all; sec. 26, lots 1-4, S 1/2 N 1/2, N 1/2 S 1/2, SW 1/4 SW 1/4.

On August 19, 1981, a decision was rendered by BLM which required the execution of numerous standard and special stipulations by Marta F. Stroock as a condition to the issuance of the lease. While most of the stipulations apparently are acceptable to appellant, she complains that the combined effect of certain of them is to preclude any operations on the land.

The Flaming Gorge NRA was established by the Act of October 1, 1968, P.L. 90-540, 82 Stat. 904. Under the terms of the Act

[t]he Secretary of the Interior, under such regulations as he deems appropriate, * * * may permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 24, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the purposes of the Colorado River storage project and the Secretary of Agriculture finds that such disposition would not have significant adverse effects on the purposes of the recreation area: Provided, That any lease or permit respecting such minerals in the recreation area shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe.

The surface management of the lands included within appellant's lease is charged to the U.S. Department of Agriculture, Forest Service, because the NRA is within the boundaries of the Ashley National Forest, and is charged to the Bureau of Reclamation (BuRec) for purposes of operating the Colorado River Storage Project. The NRA was created for the purposes of the storage project and to protect the scenic, recreational, scientific, and historical values of the area. BLM requested a report from these agencies asking for any stipulations that these agencies deemed appropriate.

On July 8, 1981, a letter from the Regional Director, BuRec, was filed with BLM. That letter enclosed special stipulations and standard stipulations which the BuRec wished to be signed by the lessee. However, the Regional Director further stated that if the Forest Service wished to impose restrictions that are more restrictive, BuRec recommended that those be accepted. One of BuRec's stipulations required that no wells would be drilled for oil and gas within 500 horizontal feet of the maximum water surface elevation of Flaming Gorge Reservoir (maximum water surface elevation being 6,045 feet above mean sea level).

The special oil and gas lease stipulations suggested by BuRec do not contain a no-surface-occupancy stipulation.

A letter dated May 20, 1981, from the Deputy Regional Forester, United States Department of Agriculture, stated:

The lease should include the standard stipulations (Forms 3109-5, 3109-3, and 3100-8).

The Management Plan for Leasable Minerals of the Flaming Gorge National Recreation Area (approved March 6, 1979) identified the lands involved in U-12338 as part of a retention zone. Management direction for retention zones states, in part: "Allow no above-ground mining or drilling operations which would be visible from the reservoir, major developed recreation sites, or major traveled roads."

* * * * *

The plan further recommends that leases in retention zones be issued with a no-surface occupancy stipulation. However, an on the ground review of the above-described lands disclosed an area along the jeep trail in Finch's Draw where entry might possibly be allowed. Therefore, we recommend that this lease include the enclosed controlled or limited surface use stipulation, and that the following be made part of the stipulation:

Description: Entire lease area

Reasons for Restriction: Area is in the foreground or middleground view of Flaming Gorge Reservoir and major developed recreation areas. If occupancy is allowed, the lessee will be responsible for maintaining the visual aesthetics and recreational values as directed in the Flaming Gorge NRA Management and Mineral Plans.

Duration of Restriction: Year-round

Our recommendations are based on the Environmental Statement and Management Plan for the Flaming Gorge National Recreation Area, Ashley National Forest.

In effect, although the management plan for the Flaming Gorge NRA calls for a no-surface-occupancy stipulation, the Forest Service itself felt that a controlled or limited surface use stipulation should be included since an area exists where entry might be allowed.

After receiving the reports from the agencies, BLM required that appellant comply with certain stipulations:

Special Stipulation No. 2 provides:

2. No occupancy of the surface in the following areas is authorized by this lease. The lessee may employ directional drilling to develop the oil and gas resources under these areas, provided that such drilling or other works will not disturb the surface area or otherwise interfere with their use by the surface management agency. The areas to be excluded from surface occupancy unless specifically approved in the operating plan are:

(a) Within 500 feet on either side of the centerline of any and all roads and/or highways within the lease area.

(b) Within 200 feet on either side of the centerline of any and all designated trails within the lease area.

(c) Within 500 feet of the normal high waterline of any and all streams, lakes, ponds, and reservoir located within the lease area.

(d) Within 400 feet of any and all springs within the lease area.

(e) Within 400 feet of any improvements either owned, permitted, leased, or otherwise authorized by the surface management agency.

Special Stipulation No. 3 provides:

3. No access or work trail or road, earth cut or fill, structure or other improvement, including an active drilling rig, will be permitted if it can be viewed from the Flaming Gorge Reservoir.

The concern of appellant with respect to these two stipulations is expressed in her statement of reasons (SOR) as follows:

Although the no surface occupancy stipulation is limited to certain portions of the Lease, when combined with Special Stipulation No. 3 discussed in Point I above, it completely precludes Appellant from conducting oil and gas operations on the leasehold property.

Special Stipulation No. 3 in effect requires that any oil and gas operations engaged in by Appellant must not be visible from Flaming Gorge Reservoir. An examination of the relevant portion of the most recent United States Geological Survey Topographical Map, attached hereto as Exhibit "D" and made a part hereof, which shows the Lease tract outlined in yellow, indicates that the only portion of the land on which oil and gas operations may be conducted without being visible from Flaming Gorge Reservoir is in Finch Draw; however, Appellant is prohibited from conducting any operations on the surface of the land in Finch Draw because of the NSO stipulation quoted above. There are several intermittent streams that flow in Finch Draw, and according to the NSO stipulation, no occupancy of the surface is permitted within 500 feet of the normal high waterline of each of those streams. The result is that Appellant may reach any oil and gas deposits in Finch Draw by directional drilling only. The contours shown on the Topographical Map for Finch Draw indicate that 500 feet from the normal high waterline of each stream would force Appellant to drill from a very steep slope. Drilling on such an incline to reach deposits in Finch Draw is technologically impossible. Moving up the slope to a point from which drilling would be possible would make the operations visible from Flaming Gorge Reservoir and is prohibited by Special Stipulation No. 3.

The combined effect of the two stipulations is that there is no point on the lands included within Lease No. U-12338 where Appellant can conduct oil and gas operations either by direct or indirect drilling.

SOR at 10-11.

As previously noted, the legislation creating this NRA expressly provided that minerals in the recreation area may only be leased with the consent of the Secretary of Agriculture and upon such terms as he may prescribe. Therefore, neither BLM nor this Board may refuse to include any stipulations imposed by the Deputy Regional Forester in such cases. Cf. Duncan Miller, 6 IBLA 216, 223-24, 79 I.D. 416, 420-21 (1972). However, BuRec is an agency of the Department of the Interior, and its recommendations regarding leasing and proposed stipulations are advisory only, and are subject to modification.

It does not appear that BuRec intended that its stipulations should have the effect of precluding a lessee from operating anywhere on the premises. In fact, the correspondence from both the Forest Service and BuRec indicate a willingness to accommodate oil and gas leasing operations on the NRA, subject only to reasonable protection of the resources values each is respectively charged with maintaining. In a memo dated September 18, 1981, the Acting Regional Director stated:

The reason for these particular stipulations on lease U-12338 is to have the opportunity to coordinate well site locations (if drilling is contemplated) and related actions so they will not interfere with the operations and maintenance of Flaming Gorge reservoir and to protect the reservoir from pollution.

It is unlikely that BuRec intended that its requested stipulation would have the effect of excluding the lessee from operating on the only area of the lease which would be considered suitable by the Forest Service. It would also appear that Stipulation No. 2 is susceptible to modification in some way which would assure that the lessee's operations in Finch Draw would not pollute the reservoir. Accordingly, Stipulation No. 2 is set aside. The case will be remanded to BLM which will request BuRec to make an appropriate modification or substitution in which the Forest Service will be requested to concur.

Stipulation No. 3 is affirmed as an appropriate expression of the Forest Service's condition for consenting to the issuance of the lease and the implementation of its management plan.

Appellant also objects to the fact that the Forest Service stipulations are to be observed year-round, asserting that recreational use of the area is seasonally limited. We have already explained that the conditions imposed by those exercising the delegated authority of the Secretary of Agriculture in Flaming Gorge NRA are authorized by statute at discretion, and are not subject to review within this Department. Moreover, unless it should prove to be impossible to adjust Stipulation No. 2 to permit the lessee to operate in Finch Draw, year-round compliance with the "Controlled or Limited Surface Use Stipulation" should not be especially burdensome.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, set aside in part, and the case remanded for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

